

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Application for Review of a Decision of the	)	
Wireline Competition Bureau by	)	
	)	
Sioux Falls School District 49-5 Sioux Falls,	)	File No. SLD-161034649
South Dakota	)	
	)	
Schools and Libraries Universal Service Support	)	CC Docket No. 02-6
Mechanism	)	

**ORDER**

**Adopted: August 10, 2020**

**Released: August 17, 2020**

By the Commission:

**I. INTRODUCTION**

1. The E-Rate program provides funding to bring affordable, high-speed broadband connectivity to tens of thousands of schools and libraries around the country.<sup>1</sup> To ensure the fair and efficient administration of the program, the Commission adopted filing deadlines and other procedural rules, and directed the Universal Service Administrative Company (USAC) to administer the program consistent with those requirements. In funding year 2016, USAC transitioned to a web-based account and application management portal for the E-Rate program, but challenges in the rollout process resulted in applicant confusion that, in turn, led to a number of ministerial, clerical, or procedural errors. One such applicant, Sioux Falls School District 49-5 (Sioux Falls or applicant), made an error on its funding year 2016 application by entering the wrong dollar amount in a field that it misinterpreted. As a result, Sioux Falls received a funding commitment from USAC for an amount far less than it had intended to request. Sioux Falls unsuccessfully made several attempts to correct the error,<sup>2</sup> eventually resulting in its filing of the instant Application for Review.<sup>3</sup> Given that Sioux Falls made a correctable clerical error that USAC had several opportunities to fix before Sioux Falls resorted to filing its late-filed appeal with the Commission, we now grant the Application for Review.

<sup>1</sup> The E-Rate program is more formally known as the schools and libraries universal service support mechanism.

<sup>2</sup> Letter from Schools and Libraries Division, Universal Service Administrative Company, to Sioux Falls School District 49-5 (dated July 6, 2017) (July 2017 Revised Funding Commitment Decision Letter); *Streamlined Resolution of Requests Related to Actions by the Universal Service Administrative Company*, CC Docket No. 02-6, Public Notice, 34 FCC Rcd 1926, 1936 (WCB 2019) (*March 2019 Streamlined Request Resolution PN*).

<sup>3</sup> Letter from Dr. Brian Maher, Superintendent, Sioux Falls School District 49-5, and Cynthia B. Schultz, Counsel for Sioux Falls School District 49-5, to the Office of the Secretary, FCC, CC Docket No. 02-6 (filed Apr. 26, 2019) (Application for Review).

2. Specifically, in this Order, we find that the issue on appeal should have been resolved by USAC before Sioux Falls was compelled to file an appeal with the Commission.<sup>4</sup> In addition, we find good cause to waive (1) section 54.720(a) of the Commission's rules requiring that Sioux Falls submit its appeal within 60 days of USAC's decision and; (2) sections 54.504(a) and 54.507(c) of our rules, as necessary, to permit Sioux Falls to correct the ministerial and clerical error on its funding year 2016 application.<sup>5</sup> Accordingly, we remand Sioux Falls' funding year 2016 application to USAC to determine compliance with E-Rate program rules and requirements and for further action consistent with this Order. In granting Sioux Falls' Application for Review, we also waive the invoice filing deadline in section 54.514(a) of the Commission's rules and direct USAC to waive any other procedural deadlines, including the service delivery deadline for non-recurring services, that might be necessary to effectuate our ruling.<sup>6</sup>

## II. BACKGROUND

### A. E-Rate Program Rules and Requirements

3. Under the E-Rate program, eligible schools, libraries, and consortia that include eligible schools and libraries may apply for universal service support for eligible services.<sup>7</sup> Once a school or library has complied with the Commission's competitive bidding requirements and has entered into an agreement for eligible services, it must file an FCC Form 471 application to notify USAC of the services that have been ordered, the service providers with which the applicant has entered into agreements, and an estimate of the funding needed for eligible services.<sup>8</sup> Commission rules require that FCC Form 471 applications be submitted to USAC before the close of the applicable funding year's filing window.<sup>9</sup>

4. Beginning in funding year 2016, E-Rate applicants were required to submit their FCC Form 471 applications using the E-Rate Productivity Center (EPC), USAC's web-based account and application management portal for the E-Rate program.<sup>10</sup> Using this system, applicants enter their FCC Form 471 information online and complete the application process by certifying that they are complying with the program's rules and requirements. Upon submission of a completed FCC Form 471 application, USAC issues a receipt acknowledgement letter to both the applicant and the service provider to confirm receipt of a timely filed form.<sup>11</sup> Ministerial- and clerical-type errors may be corrected after the form is

<sup>4</sup> 47 CFR § 54.720(a) (requiring affected parties requesting review or waiver of a USAC decision to file such request within 60 days from the date USAC issues a decision); *see Requests for Review of Decisions of the Universal Service Administrator by Savannah R-III School District; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 23 FCC Rcd 12053, 12057, n.30 (WCB 2008) (*Savannah R-III School District Order*) (finding good cause to waive section 54.720 of the Commission's rules that establishes deadlines for affected parties to seek review of decisions issued by USAC because the issue on appeal before the Commission should have been resolved by USAC before the petitioner resorted to filing an appeal).

<sup>5</sup> 47 CFR §§ 54.504(a) (requiring a completed FCC Form 471 be submitted to USAC), 54.507(c) (requiring applications to be filed within a specified time period); *see also Modernizing the E-Rate Program for Schools and Libraries; Connect America Fund*, WC Docket Nos. 13-184, 10-90, Second Report and Order and Order on Reconsideration, 29 FCC Rcd 15538, 15586, text accompanying n.314 (2014) (*2014 Second E-Rate Order*).

<sup>6</sup> *See, e.g.*, 47 CFR §§ 54.507(d) (requiring non-recurring services to be implemented by September 30 following the close of the funding year), 54.514(a) (codifying the invoice filing deadline).

<sup>7</sup> 47 CFR §§ 54.501-54.505.

<sup>8</sup> *See* 47 CFR § 54.504(c).

<sup>9</sup> 47 CFR §§ 54.504(a), 54.507(c); *see 2014 Second E-Rate Order*, 29 FCC Rcd at 15586, para. 116 & n.314.

<sup>10</sup> *Modernizing the E-Rate Program for Schools and Libraries*, WC Docket No. 13-184, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 8870, 8945, para. 190 (2014) (*2014 First E-Rate Order*) (simplifying the E-Rate application process by requiring the use of electronic filings).

<sup>11</sup> *See* USAC Website, Step 3: Applying for Discounts, FCC Form 471, <https://www.usac.org/e-rate/applicant-process/applying-for-discounts/fcc-form-471-filing/> (last visited Aug. 11, 2020).

submitted but before USAC issues a Funding Commitment Decision Letter, either through what is known as the receipt acknowledgement letter modification process in EPC or during Program Integrity Assurance (PIA) reviews (i.e., the review process USAC uses to verify the completeness and accuracy of an applicant's FCC Form 471 submission and to ensure overall compliance with E-Rate program rules prior to issuing a Funding Commitment Decision Letter).<sup>12</sup>

5. As the Commission has emphasized, "filing deadlines are necessary for the efficient administration of the E-rate program," and waivers are not to be routinely granted when deadlines are missed.<sup>13</sup> However, when an applicant has submitted a timely E-Rate filing, the Commission has issued waivers of the deadline to submit the filing to permit the applicant to correct minor errors when a showing of good cause has been made.<sup>14</sup> In the 2006 *Bishop Perry Order*, the Commission found good cause existed to allow petitioners to correct immaterial clerical, ministerial, or procedural errors made in filling out their FCC Form 471 applications.<sup>15</sup>

6. In subsequent Bureau orders, relief has been granted to E-Rate program participants for many types of ministerial and clerical errors on the FCC Form 471 and related forms.<sup>16</sup> In the 2008 *Archer Public Library Order*, for example, the Bureau granted relief to a school that submitted an application for monthly service charges for one line instead of for the two lines it actually needed, as well as to other applicants that submitted information in such a manner that it was misinterpreted by USAC.<sup>17</sup> In granting relief, the Bureau noted that the facts and circumstances of each case involved the rejection of funding requests due to unintentional administrative or clerical errors and did not entail misuse of funds or a failure to adhere to core program requirements.<sup>18</sup> It also found that the denial of funding requests inflicted undue hardship on the applicants and that rigid compliance with the application procedures did not further the purposes of section 254(h) of the Telecommunications Act of 1996 (Act) or serve the public interest.<sup>19</sup> Relying on the *Archer Public Library Order*, in the 2010 *Ann Arbor Order*, the Bureau similarly granted relief to several E-Rate applicants that had made inadvertent errors on their FCC Form 471 applications, including applicants that entered the discounted annual price of the requested services rather than the pre-discount annual price on their form.<sup>20</sup> In that order, the Bureau defined the types of

<sup>12</sup> See *Request for Review of the Decision of the Universal Service Administrator by Bishop Perry Middle School et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 21 FCC Rcd 5316, 5320-21, para. 11 (2006) (*Bishop Perry Order*) (waiving the Commission's rules to allow applicants additional time to file their FCC Forms 471 where applicants committed ministerial or clerical errors); *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 26 FCC Rcd 6487, 6488-89, para. 5 (2011) (*Correction Deadline Order*) (directing USAC to allow applicants to amend their forms to correct ministerial and clerical errors until a Funding Commitment Decision Letter is issued); see also USAC Website, Step 1: Competitive Bidding, Ministerial & Clerical Errors, <https://www.usac.org/e-rate/applicant-process/competitive-bidding/ministerial-clerical-errors/> (last visited Aug. 11, 2020).

<sup>13</sup> 2014 *First E-Rate Order*, 29 FCC Rcd at 8966, para. 239.

<sup>14</sup> See generally *Bishop Perry Order*.

<sup>15</sup> *Id.* at 5320-21, paras. 10-11.

<sup>16</sup> See, e.g., *Requests for Review of Decisions of the Universal Service Administrator by Archer Public Library*, CC Docket No. 02-6, 23 FCC Rcd 15518, 15521, para. 6 (WCB 2008) (*Archer Public Library Order*); *Requests for Waiver and Review of Decisions of the Universal Service Administrator by Ann Arbor et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 25 FCC Rcd 17319, 17319-21, para. 2 (WCB 2010) (*Ann Arbor Order*).

<sup>17</sup> *Archer Public Library Order*, 23 FCC Rcd at 15520-21, para. 6.

<sup>18</sup> *Id.* at 15522, para. 7.

<sup>19</sup> *Id.* at 15522, para. 8 (citing to 47 U.S.C. § 254(h)). The Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, amended the Communications Act of 1934.

<sup>20</sup> *Ann Arbor Order*, 25 FCC Rcd at 17319-21, para. 2.

ministerial and clerical errors that could be corrected as ones that would, for example, be made “when entering data from one list to another, such as mistyping a number, using the wrong name or phone number, failing to enter an item from the source list onto the application, or making an arithmetical error.”<sup>21</sup>

## **B. Factual Background**

7. On April 28, 2016, Sioux Falls filed its funding year 2016 FCC Form 471 application seeking support for category two equipment.<sup>22</sup> Due to changes in the terminology used for certain fields on the form, Sioux Falls accidentally entered the discounted cost of the equipment for which it sought support (\$2,252,900) in a field that required the applicant to enter the entire pre-discounted cost (\$3,754,650).<sup>23</sup> As a result of this error, when calculating the amount of support for which Sioux Falls was eligible, USAC applied Sioux Falls’ 60% discount rate to the already-discounted figure, resulting in a funding commitment amount far less than intended.<sup>24</sup>

8. On July 26, 2016, during USAC’s PIA review of the FCC Form 471 application but before the issuance of the Funding Commitment Decision Letter, USAC sent a routine inquiry to Sioux Falls concerning the eligibility of the equipment it was purchasing.<sup>25</sup> In response, Sioux Falls sent USAC a spreadsheet breaking out its pre-discount and post-discount costs and clearly identifying \$3,754,650 as the total pre-discount amount and \$2,252,900 as the total post-discount amount.<sup>26</sup> USAC did not make any changes to Sioux Falls’ FCC Form 471 application based on the information obtained during PIA review.<sup>27</sup> Rather, on January 9, 2017, USAC issued a Funding Commitment Decision Letter for \$1,335,798 in E-Rate funding based on USAC’s application of Sioux Falls’ 60% discount rate to the already discounted amount.<sup>28</sup> The funding commitment also had been further reduced to remove funds for a school in the school district that had closed and, therefore, was not eligible for funding.<sup>29</sup>

9. On February 10, 2017, Sioux Falls filed a timely appeal of the Funding Commitment Decision Letter with USAC, indicating what the pre-discount amount and funding commitment amount should have been and attaching a spreadsheet showing the correct amounts and stating that the “EPC

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<sup>21</sup> *Ann Arbor Order*, 25 FCC Rcd at 17319-21, para. 2.

<sup>22</sup> 2016 FCC Form 471, Sioux Falls School District 49-5, filed Apr. 28, 2016, (File No. SLD-161034649) (2016 FCC Form 471).

<sup>23</sup> Application for Review at 3. Specifically, Sioux Falls entered the discounted cost of the equipment (\$2,252,900) in a field that requested the “Total Eligible *Pre-Discount* One-Time Charges.” 2016 FCC Form 471 at 7 (emphasis added). In previous funding years, the same field had requested “Annual non-recurring charges.” *See, e.g.*, Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (2013) at 4 (2013 FCC Form 471).

<sup>24</sup> Application for Review at 4. Based on the percentage of students that qualify for free or reduced priced lunch under the National School Lunch Program (NSLP), Sioux Falls is entitled to a 60% discount on E-Rate goods and services. 2016 FCC Form 471. Therefore, Sioux Falls meant to apply for  $\$3,754,650 \times 60\% = \$2,252,900$  in E-Rate funds. Instead, it applied for  $\$2,252,900 \times 60\% = \$1,351,740$ , which is \$901,160 less than it intended or 36% of the pre-discount amount.

<sup>25</sup> Application for Review at Exh. D.

<sup>26</sup> *Id.*

<sup>27</sup> Application for Review at 4.

<sup>28</sup> *Id.*; *see supra* note 24.

<sup>29</sup> Application for Review at n.16. While Sioux Falls claims that the downward adjustment for the closed school was in error and should be reversed, *id.*, we make no determination on this issue and request that USAC examine this issue on remand.

calculations are funding 60% of the budget, not the pre-discount budget.”<sup>30</sup> On February 28, 2017, Sioux Falls followed up with USAC on its appeal, noting again that the school district had inadvertently entered the discounted cost of the equipment in a field that required it to enter the pre-60% discounted cost, and attaching a spreadsheet demonstrating this.<sup>31</sup> When it did not receive a response from USAC, Sioux Falls again inquired about the appeal on March 3, 2017 and was informed the “appeals” were pending.<sup>32</sup> Despite Sioux Falls’ attempts to explain the clerical error, records show that USAC failed to understand Sioux Falls’ request to correct the error.<sup>33</sup> Based on this misunderstanding, on July 6, 2017, USAC issued a Revised Funding Commitment Decision Letter, denying the appeal and stating, in its entirety, “FRN 1699072622 for your appeal did not show that USAC’s determination was incorrect. Lack of information provided. Consequently, your appeal is denied.”<sup>34</sup> USAC provided no other explanation for the denial and did not send a separate Administrator’s Decision Letter formally resolving the appeal, as was its practice in previous years.<sup>35</sup> On August 9, 2017, after USAC had denied Sioux Falls’ appeal, USAC sent Sioux Falls another Revised Funding Commitment Decision Letter.<sup>36</sup> Apparently, USAC treated the February 28, 2017 follow-up inquiry as a duplicate appeal but did not dismiss it until August 9, 2017, and noted in that Revised Funding Commitment Decision Letter that another decision was forthcoming.<sup>37</sup>

10. Because it believed its appeal had not yet been resolved, Sioux Falls reached out again to USAC on January 31, 2018 to remind USAC that its appeal was still pending, but was only told to file an invoice for the approved funding commitment amount.<sup>38</sup> As a result, Sioux Falls filed an invoice with USAC on February 2, 2018 for \$1,335,798.<sup>39</sup> On February 9, 2018, USAC denied the invoice for being filed after the invoice filing deadline.<sup>40</sup> Sioux Falls states that it continued to believe its appeal was still pending and that its invoices would be funded once USAC resolved its appeal.<sup>41</sup> However, in late 2018, after working with an E-Rate consultant, Sioux Falls realized that there would be no further formal notice of USAC’s denial of its appeal and that it would have to file an appeal with the Commission.<sup>42</sup>

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<sup>30</sup> See Appeal from Sioux Falls School District 49-5, to USAC (Feb. 10, 2017) (USAC Appeal).

<sup>31</sup> See Appeal Status Inquiry from Sioux Falls School District 49-5 to USAC (Feb. 28, 2017).

<sup>32</sup> See Appeal Status Inquiry from Sioux Falls School District 49-5 to USAC (Mar. 3, 2017); Appeal Status Response from USAC to Sioux Falls School District 49-5 (Mar. 3, 2017).

<sup>33</sup> USAC Initial Appeal Review Notes (May 15, 2017).

<sup>34</sup> July 2017 Revised Funding Commitment Decision Letter.

<sup>35</sup> Application for Review at 4-5; see also USAC Website, Schools and Libraries Program News Brief (Mar. 24, 2017), <https://apps.usac.org/sl/tools/news-briefs/preview.aspx?id=761> (noting that USAC would stop issuing paper Administrator’s Decision Letters and instead issue Revised Funding Commitment Decision Letters for all resolved appeals for funding year 2016 and future funding years).

<sup>36</sup> Letter from Schools and Libraries Division, Universal Service Administrative Company, to Sioux Falls School District 49-5 (dated Aug. 9, 2017) (August 2017 Revised Funding Commitment Decision Letter).

<sup>37</sup> *Id.* The August 2017 Revised Funding Commitment Decision Letter stated that while Sioux Falls’ inquiry was being treated as a duplicate submission to the original appeal and was being closed, review on Sioux Falls’ first appeal was not yet complete and USAC would “issue an Administrator’s Decision” at some point in the future. *Id.*

<sup>38</sup> Application for Review at 4-5.

<sup>39</sup> *Id.* at 5.

<sup>40</sup> See Letter from USAC, Schools and Libraries Division, to Quita Buckneberg, Sioux Falls School District 49-5 (dated Feb. 9, 2018) (Form 472 (BEAR) Notification Letter).

<sup>41</sup> Application for Review at 6.

<sup>42</sup> *Id.*

11. On February 1, 2019, Sioux Falls filed a request with the Commission to reverse USAC's decision and waive any rules to the extent necessary.<sup>43</sup> The Bureau summarily denied the appeal on March 29, 2019 on the basis that it was late-filed because it should have been filed within 60 days of USAC's issuance of the July 2017 Revised Funding Commitment Decision Letter denying Sioux Falls' appeal, or September 4, 2017.<sup>44</sup>

12. On April 26, 2019, Sioux Falls filed the instant Application for Review with the Commission.<sup>45</sup> In it, Sioux Falls argues that the Commission should waive its rules to allow its untimely appeal to be considered on the merits because it filed its appeal within a reasonable time after receiving actual notice of an adverse decision by USAC and/or the appeal should not have been necessary at all had USAC allowed Sioux Falls to correct its error.<sup>46</sup> It also asks for relief on the merits, citing problems with the new EPC portal in funding year 2016 that led to the clerical error.<sup>47</sup> Sioux Falls notes that USAC consistently failed to acknowledge or implement a correction to its FCC Form 471 application despite multiple attempts.<sup>48</sup> Finally, Sioux Falls argues that the Bureau denied the appeal without adequate articulation of its reasoning and based solely on the fact that the appeal was untimely.<sup>49</sup> It seeks a waiver of several rules, including sections 54.507(c) (the FCC Form 471 application filing deadline), 54.720(a) (the appeal filing deadline), and 54.514(a) (the invoice filing deadline).<sup>50</sup>

### III. DISCUSSION

13. We reverse the Bureau's decision denying Sioux Falls' appeal and grant its Application for Review. Specifically, consistent with Commission precedent, we find good cause to waive our rules to allow Sioux Falls' appeal of the USAC decision to be filed outside the 60-day filing deadline and to permit the correction of the clerical error on its funding year 2016 FCC Form 471 application.<sup>51</sup> Although we recognize that the Commission's filing deadlines and procedural rules are necessary for the efficient administration of the E-Rate program, we find that strict adherence to our rules in this particular instance is in the public interest where Sioux Falls made a clerical error that (1) could have been remedied by USAC long before Sioux Falls resorted to filing an appeal with the Commission and (2) resulted in a funding commitment amount far less than the amount Sioux Falls intended to request.

14. The Commission may waive any provision of its rules on its own motion or on petition for good cause shown.<sup>52</sup> A rule may be waived where particular facts make strict compliance inconsistent with the public interest.<sup>53</sup> In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.<sup>54</sup> In sum, a waiver is

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<sup>43</sup> Letter from Dr. Brian Maher, Superintendent, Sioux Falls School District 49-5, and Cynthia B. Schultz, Counsel for Sioux Falls School District 49-5, to the Office of the Secretary, FCC, CC Docket No. 02-6 (filed Feb. 1, 2019) (Request for Review and Waiver).

<sup>44</sup> *March 2019 Streamlined Request Resolution PN*.

<sup>45</sup> Application for Review.

<sup>46</sup> *Id.* at 8-16.

<sup>47</sup> *Id.* at 17-21.

<sup>48</sup> *Id.* at 3-5.

<sup>49</sup> *Id.* at ii; *see also id.* at 6.

<sup>50</sup> *Id.* at ii, iv.

<sup>51</sup> 47 CFR §§ 54.504(a), 54.507(c), 54.720(a).

<sup>52</sup> 47 CFR § 1.3.

<sup>53</sup> *See Northeast Cellular Telephone Co. v. FCC*, 879 F.2d 1164, 1166 (D.C. Cir. 1990).

<sup>54</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.



appropriate if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule.<sup>55</sup>

15. *Waiver of Deadline for Appeal of a USAC Decision.* We waive the 60-day deadline under which Sioux Falls was required to appeal USAC's July 2017 Revised Funding Commitment Decision Letter to the Bureau for two reasons.<sup>56</sup> First, when USAC issued the July 2017 Revised Funding Commitment Decision Letter, it failed to understand the basis of Sioux Falls' timely appeal of the original Funding Commitment Decision Letter, and thus, the July 2017 Revised Funding Commitment Decision Letter did not clearly communicate to Sioux Falls that USAC was denying Sioux Falls' request to correct its clerical error. Second, in noting that another decision was forthcoming in the August 2017 Revised Funding Commitment Decision Letter, and having just changed the process by which certain decisions on appeal were communicated to E-Rate program participants shortly after Sioux Falls' appeal to USAC, USAC failed to make clear that the July 2017 Revised Funding Commitment Decision Letter was in fact denying Sioux Falls' appeal of the original Funding Commitment Decision Letter. In these narrow circumstances, we find that USAC effectively induced Sioux Falls into reasonably believing that its timely appeal of the original Funding Commitment Decision Letter was still pending with USAC and had not been denied, and it would be unreasonable to expect Sioux Falls to file a second appeal in these circumstances. We thus find good cause to waive the 60-day deadline governing Sioux Falls' second appeal to the Commission and reverse the Bureau's refusal to waive that deadline.

16. Under E-Rate program rules, an affected party seeking review or waiver of a USAC decision must file the request with the Commission within 60 days of the date on which USAC issued the decision.<sup>57</sup> In the *Savannah R-III School District Order*, the Bureau's Telecommunications Access Policy Division found that a waiver of the 60-day appeal deadline was warranted where the issue before the Commission should have been resolved with USAC before the applicant resorted to filing an appeal with the Commission.<sup>58</sup> Specifically, in the *Savannah R-III School District Order*, the school district inadvertently gave USAC an incorrect answer about the eligibility of its services during the PIA review of its application, which resulted in USAC re-categorizing the type of services requested and ultimately, a denial of funding.<sup>59</sup> Savannah R-III School District appealed USAC's decision, correctly demonstrating that it had made a mistake in answering the question.<sup>60</sup> Despite clear evidence of the mistake, USAC denied the appeal, noting that the school district did not demonstrate that the information provided during PIA review was incorrect.<sup>61</sup>

17. Even though Savannah R-III School District subsequently filed an appeal of USAC's decision with the Commission more than 60 days after USAC's denial, the Bureau's Telecommunications Access Policy Division granted the appeal on the merits and waived the 60-day filing deadline.<sup>62</sup> The Bureau noted that had additional review been performed, USAC would have likely found that— notwithstanding the incorrect response provided during PIA review—the services the school district

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<sup>55</sup> *Northeast Cellular*, 879 F.2d at 1166.

<sup>56</sup> 47 CFR § 54.720(a).

<sup>57</sup> *Id.*

<sup>58</sup> *Savannah R-III School District Order*, 23 FCC Rcd at 12057, n.30.

<sup>59</sup> *Id.* at 12054-55, para. 4. Savannah R-III School District said “yes” to two questions when the answer was actually “no.” As a result, USAC re-categorized its services and denied funding because Savannah R-III School District had not sought bids for that category of service during the competitive bidding process. *Id.*

<sup>60</sup> *Id.*

<sup>61</sup> *Id.* at 12055.

<sup>62</sup> *Id.* at 12057, n.30 (appeal filed 351 days late from decision on funding year 2005 and 152 days late from decision on funding years 2003 and 2004).

requested were properly categorized and further appeals would have been unnecessary in the first instance.<sup>63</sup>

18. We find that in the instant case, as in the *Savannah R-III School District Order*, Sioux Falls' appeal to the Commission should never have been necessary in the first instance. USAC had several opportunities to act on the correct information submitted by Sioux Falls regarding its funding commitment amount, but failed to recognize and address the issue before Sioux Falls resorted to filing an appeal with the Commission. Initially, USAC ignored the information submitted in August 2016 when Sioux Falls provided the correct funding amount during PIA review. Then, USAC failed to address or correct the funding error when it denied Sioux Falls' appeal on completely different grounds. Finally, USAC dismissed a follow-up inquiry on its appeal, which included a spreadsheet showing the correct funding information and the reason for the reduced funding commitment. Despite Sioux Falls' diligent and repeated attempts to correct its funding commitment amount, USAC did not acknowledge the issue and correct the error, eventually prompting Sioux Falls to appeal to the Commission, which was only late-filed after Sioux Falls realized that a formal denial of its appeal to USAC was not forthcoming. Accordingly, we waive that deadline and consider Sioux Falls' appeal on the merits.

19. *Request to Correct Ministerial and Clerical Error.* Consistent with precedent, and based on our review of the record, we find good cause to waive sections 54.504(a) and 54.507(c) of our rules to the extent necessary to allow Sioux Falls to correct its funding year 2016 FCC Form 471 application to receive the full amount of funding it intended to request.<sup>64</sup> In particular, we find relevant that Sioux Falls made a clerical error that USAC should have resolved first during the PIA process and then subsequently on appeal.

20. The Commission has previously recognized this very type of mistake, i.e., inserting the discounted amount into the field reserved for the pre-discounted figure, as a correctable ministerial and clerical error.<sup>65</sup> Further, the Commission permits USAC to correct ministerial and clerical errors on an already-submitted FCC Form 471 application up until the time the Funding Commitment Decision Letter is issued.<sup>66</sup> Indeed, the Commission has noted that USAC has an obligation to work with applicants and correct such mistakes because of the complexity and detail involved in completing E-Rate forms and associated documentation.<sup>67</sup>

21. Additionally, funding year 2016 was an especially confusing year for applicants applying for E-Rate funding given the transition to the EPC platform. Although these circumstances were not unique to Sioux Falls, they exacerbated the other unique challenges faced by Sioux Falls in correcting its clerical error. Sioux Falls not only had to navigate the move to the EPC platform, which experienced significant unforeseen technical difficulties, but also had to interpret new terminology used on the FCC Form 471 application during the application process. Further, Sioux Falls' attempts to communicate its problem with USAC through EPC only led to further confusion, including the treatment of a clarifying

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<sup>63</sup> *Savannah R-III School District Order*, 23 FCC Rcd at 12057, n.30.

<sup>64</sup> See, e.g., *Ann Arbor Order*, 25 FCC Rcd at 17320, para. 2 (allowing a correction when the applicant entered the discounted annual price rather than the pre-discount annual price on the FCC Form 471). We find good cause to waive 47 CFR § 54.504(a), requiring a completed FCC Form 471 be submitted to USAC, and 47 CFR § 54.507(c), requiring applications to be filed within a specified time period.

<sup>65</sup> See, e.g., *Ann Arbor Order*, 25 FCC Rcd at 17320, para. 2.

<sup>66</sup> *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 26 FCC Rcd 6487, 6488-89, para. 5 (2011) (*Correction Deadline Order*). In the *Bishop Perry Order*, the Commission gave applicants 15 calendar days to submit corrections of clerical or ministerial errors, or to refile their FCC Form 470 or FCC Form 471 application, or associated documentation. *Bishop Perry Order*, 21 FCC Rcd at 5326-27, para. 23.

<sup>67</sup> *Correction Deadline Order*, 26 FCC Rcd at 6488-89, para. 5.



inquiry as a duplicate appeal that was dismissed after several months had passed and after USAC denied the original appeal.

22. Moreover, consistent with our finding in similar instances, we believe our action today serves the public interest by furthering the goals of section 254 of the Act because Sioux Falls' funding will not be denied due to a clerical error, inflicting undue hardship on the applicant.<sup>68</sup> Finally, we find no evidence of waste, fraud, or abuse presented by Sioux Falls' Application for Review or the underlying record.

23. Accordingly, we remand Sioux Falls' funding year 2016 FCC Form 471 application to USAC and direct USAC to complete its review of the application consistent with this Order. We also waive the invoice filing deadline, and direct USAC to waive any other procedural deadlines, including the service delivery deadline for non-recurring services, that might be necessary to effectuate our decision.<sup>69</sup>

#### IV. ORDERING CLAUSES

24. ACCORDINGLY, IT IS ORDERED, pursuant to section 1.115 of the Commission's rules, 47 CFR § 1.115, that the waivers requested in the Application for Review filed by Sioux Falls School District 49-5, Sioux Falls, South Dakota, on April 26, 2019, ARE GRANTED.

25. IT IS FURTHER ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and section 1.3 of the Commission's rules, 47 CFR § 1.3, that sections 54.504(a), 54.507(c)-(d), 54.514(a) and 54.720(a) of the Commission's rules, 47 C.F.R. §§ 54.504(a), 54.507(c)-(d), 54.514(a) and 54.720(a), ARE WAIVED to the extent provided herein.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

<sup>68</sup> See, e.g., *Bishop Perry Order*, 21 FCC Rcd at 5325, para. 20; see also 47 U.S.C. § 254(h) (directing the Commission to "enhance . . . access to advanced telecommunications and information services for all public and non-profit elementary and secondary school classrooms, health care providers and libraries").

<sup>69</sup> See, e.g., 47 CFR §§ 54.514(a), 54.507(d)(4).